DAWN

OPINION

Judges depart

TWO upstanding justices of the Supreme Court have chosen to exit honourably rather than remain part of a "mute" entity. This was not unexpected, given how extensively the regime has managed to abase the judiciary. How can principled individuals who have dedicated a lifetime to their profession be expected to continue as part of an institution whose credibility is now in question? Perhaps the judges realised that it was futile to expect different results in the prevailing environment. Just a few years ago, one would have expected an uproar over what the International Commission of Jurists has decried as "a flagrant attack on the independence of the judiciary and the rule of law". Today, such ideals do not seem to matter, not even to those expected to uphold them. Sadly, many believe the nation's social, moral and political conscience is on the decline.

Senior justices Syed Mansoor Ali Shah and Athar Minallah gracefully resigned once it became clear that the deeply contentious 27th Amendment would now be considered law. Critics say the amendment, which has reconfigured the country's justice system to place a new Federal Constitutional Court above all other forums of justice, has reduced the Supreme Court to no more than a glorified district court. Given the extensive powers handed over to the FCC, that assessment is not off the mark. Rather than be rendered second-class judges, they may have thought it fit to depart with their prestige intact. It would also have been clear to the judges, given the precedent set with the Constitutional Bench, that the regime would not be interested in picking independent-minded judges for the new court.

Some have criticised their decision, asking why they did not exit at the time of the 26th Amendment, which set the foundations for the 27th. The judges may answer that eventually, but one cannot fault them for not having tried to effect change from within their institution. Over time, it has become clear that no rule applies in the present set-up. Without rules, no change can ever be possible. The 27th Amendment was designed to be the end of the line for such judges. This brings us to the civilian role in this coup. This is not the first instance when the powers that be have sought to subjugate the judiciary, but it is the first time a civilian dispensation has so extensively facilitated the effort. The lack of courage and commitment shown to democratic ideals from those who, till yesterday, would not tire of speaking about the supremacy of the will of the people has only highlighted the hypocrisies of our political system. This lack of conviction in the idea of a fair system of governance will have grave consequences. That much is inevitable.

KP peace jirga

ALONG with Balochistan, KP has borne the brunt of terrorist attacks in the country, especially from across Pakistan's western border. That is why it is essential to listen to what the people of the province have to say when framing counterterrorism policies and discussing plans vis-a-vis Afghanistan at the federal level. In this regard, the KP government on Wednesday organised a peace jirga in Peshawar inviting sitting and former lawmakers, together with members of civil society and tribal elders, to contribute to the discussion on how to address the problem of militancy in the province and deal with the Afghan Taliban regime. While many such gatherings have recently taken place at various levels and in multiple parts of the province, the official moot was attended by all the major political parties in KP, as well as by different segments of society. The jirga called for prioritising negotiations with Afghanistan to establish durable peace, keeping trade routes with Pakistan's western neighbour open, and reducing tensions between the provincial government and the centre.

Such efforts are welcome, as they provide an open forum for stakeholders to air their views on key matters. KP's views are important — strained relations with Afghanistan affect not only the provincial economy, but also social and cultural relations in a situation where there are divided tribes straddling both sides of the border. Meanwhile, the emphasis on talks at the jirga is understandable, as KP and the erstwhile tribal areas have been suffering from terrorism and frequent operations for over two decades. People are justifiably tired of the seemingly endless violence and displacement, and desire normalcy. Yet achieving this peace has proved highly elusive, as negotiations with the Afghan Taliban have yet to yield a concrete pathway to normality and an end to militant violence. One of the main obstacles to peace is the Afghan Taliban's refusal to give guarantees to Pakistan that they will rein in cross-border terrorism. While no province should be directly dealing with foreign states, as it is the centre's responsibility to conduct international parleys, their input must always be encouraged and welcomed. The federal government must listen closely to what the people of KP have to say — they are, after all, on the front lines of the current conflict and whatever they say merits serious thought.

Anti-abuse bill

ESCALATING incidents of violence against women, children and other vulnerable sections reflect a dire need to plug procedural gaps before enacting laws. The National Assembly has passed a new Domestic Violence (Prevention and Protection) Bill, 2025, which aims to build "protection, relief and rehabilitation of women, men, transgender, children and any vulnerable person against domestic violence" in Islamabad. It sets broad parameters for the many forms of cruelty — physical and sexual to psychological and economic — with penalties and compensations applicable under the PPC. But this, too, is in danger of becoming another piece of legislation rendered toothless by dismal conviction rates and poor institutional processes. Until the authorities discard the idea that domestic abuse is a family affair, protections will remain inaccessible for most.

Harsh punishments alone cannot ensure balance, respect and justice. Brutalisation persists without proper coordination among investigators, medico-legal, police and prosecution. Meanwhile, financial constraints not only impede rehabilitation for survivors but also encourage police corruption. Skilled investigators and a committed support infrastructure for sufferers across the country are desperately needed. Additionally, cases involving women, children and the differently abled should be resolved within a set time period. Other challenges — pending cases, insensitive attitudes, lack of witness and victim protection programmes — contribute to prolonged proceedings and erode faith in the justice system. Moreover, the government must work harder to dislodge the stigma attached to reporting abuse, as well as espouse UNFPA's 'life-skills-based education' and promote bodily autonomy as deterrents. The human rights ministry listed 63,000 gender-based violence cases from 2020-2023. In 2023, 10,201 cases of domestic violence were reported in Punjab alone — representing but a tiny fraction of the actual prevalence of domestic violence which mostly goes unreported. When morality is society's burden to bear, justice is easier to access.

BY REEMA OMER

Disguised sanctions

The provisions for judges' transfer are inconsistent with international standards.

THE removal of the requirement of the consent of individual judges for their transfer from one high court to another is one of the most significant changes brought by the 27th Amendment to the Constitution.

The process of judicial transfers before the amendment was already arbitrary and open to misuse. However, after the removal of the consent requirement and making judges who refuse transfer liable for misconduct proceedings, the provision for transfer now squarely undermines the independence of the judiciary.

The 27th Amendment fundamentally alters Article 200 of the Constitution of Pakistan, 1973. It gives the Judicial Commission of Pakistan — the body responsible for judicial appointments — the power to recommend to the president the transfer a judge from one high court to another and determine the terms and conditions for such a transfer. The amendment does not provide for any basis on which the JCP will decide whether judges should be transferred and there is no requirement to establish a mechanism with clearly defined criteria and objectives to guide recommendations for transfer.

If judges do not accept, within 30 days, they shall be subject to disciplinary proceedings under Article 209 by the Supreme Judicial Council, a judicial body responsible for inquiring into misconduct. Until the SJC makes a decision on whether the judge's refusal is misconduct or not, the judge is barred from performing their functions and is effectively suspended.

Provisions for the transfer of judges can be found in all three of Pakistan's constitutions. Article 172 of the 1956 constitution; Article 99 of the 1962 constitution, and Article 200 of the 1973 Constitution all gave the president the power to transfer judges from one high court to another in consultation with chief justice of Pakistan and the chief justices of the high courts to and from which the transfer was being made. Notably, in their original form, they all required the consent of judges to be transferred.

Article 200 of the 1973 Constitution was amended multiple times since the Constitution was adopted. The Constitution (Fifth Amendment) Act, 1976, passed during Zulfikar Ali Bhutto's time, removed the requirement of consent or consultation with the chief justice of the high courts for transfers not exceeding one year at a time. Gen Ziaul Haq's President's Order No. 14 of 1985 increased the duration for which judges could be transferred without consent or consultation with chief justices of high courts to two years, and shortly afterwards, President's Order No. 24 of 1985, provided that a judge of a high court who does not accept transfer to another high court "shall be deemed to have retired from his office".

Through the 18th Amendment, passed in 2010 with the objective of restoring the Constitution to its original form, the requirement of consent and consultation with the chief justices of the concerned high courts were brought back for all transfers, and the punitive provision of "deemed resignation" upon refusing transfer was removed.

The government has failed to provide convincing reasons for removing the requirement of consent for judicial transfers in the 27th Amendment. In one television interview, the law minister stated that transfer was a means of ending corrupt practices of the high court judges, as some of them have "opened shop" at their respective courts. This is alarming, as it shows that, instead of proceeding against such judges in the SJC for alleged misconduct, as required by Article 209, transfers are being considered a means of circumventing the constitutional accountability mechanism.

The transfer provisions are also inconsistent with international standards on the independence of the judiciary in relation to conditions of tenure. The UN Basic Principles provide that "the term of office of judges, their independence, security … conditions of service, shall be adequately secured by law". The 'Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct' also call for judges' consent for transfer, except if the transfer is pursuant to a system of regular rotation provided by law or formulated after due consideration by the judiciary. The Beijing Statement of Principles on the independence of the judiciary also establish that judges must have security of tenure and that "a judge's tenure must not be altered to the disadvantage of the judge during his or her term of office".

Arbitrary transfers violate the principle that security of tenure must be ensured and conditions of service remain unaltered. The transfer of judges outside their home provinces, especially to remote areas, can carry a punitive impact and have adverse consequences for their work and lives and amount to a change in the terms of office.

The UN Special Rapporteur on the independence of judges and lawyers in his 2020 report has described transfers as one of the most frequent kinds of disguised sanctions, which are often used in order to "prevent a judge from adjudicating on a particular case or to punish and marginalise a judge regarded as too independent or unsympathetic to the government's interests".

The perception that transfers are being used as disguised sanction threatens independent discharge of judicial functions, as all high court judges would know that decisions that are viewed as unfavourable could expose them to an adverse transfer, and if they refuse, they will have to face disciplinary proceedings that may lead to their removal.

The provision on the transfer of judges is all the more alarming when seen together with the other sweeping changes made to the judicial system in the 27th Amendment. Together, they indicate a rapid erosion of judicial independence and dismantling of the rule of law in the country. ■

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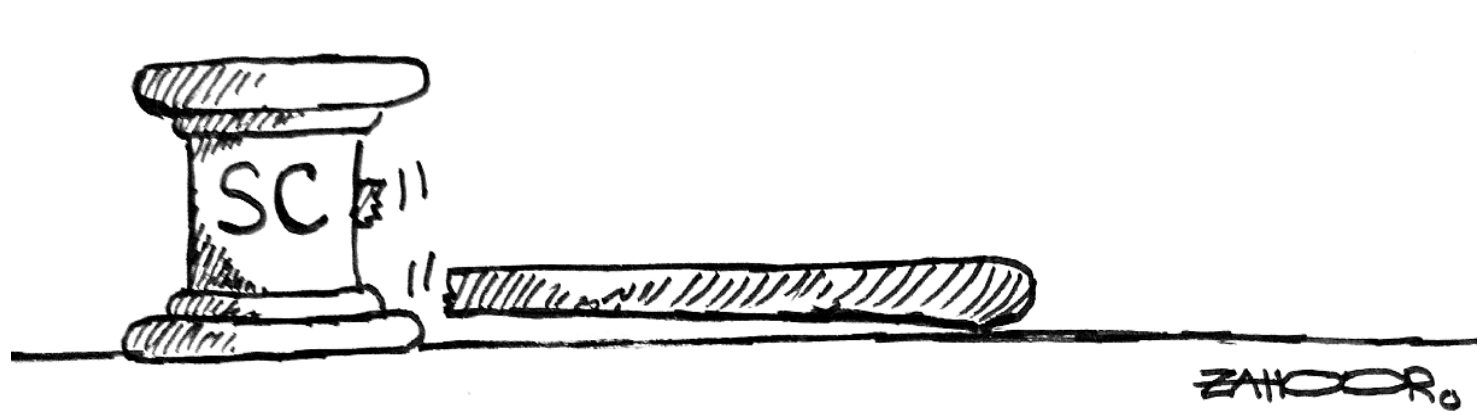

BY AYESHA RAZZAQUE

The known unknown

SCAMS are circulating and evolving constantly. There is always something to look out for and, since this is 2025, if you thought this op-ed is about a new breed of schemes enabled by AI (of which there are plenty), you are mistaken. In fact, this is about the opposite: A scam advocating against intelligence. I am referring to a breed of influencers on various short and long-form video blogging platforms that are advocating against higher education, of which there is now also a domestic, ie, Pakistani crop.

I do not begrudge anyone an opinion they might hold. If anyone genuinely believes young people in this country, or anywhere in the world, are better off with less education and that will give them a better chance at achieving their personal vision of what a successful life looks like, they are welcome to it.

But, if someone rails against higher education only to bend the arc of their argument towards the conclusion that viewers should buy a months-long course they are selling, billing it as a shortcut to success, then the difference between such influencers and phone-banking scammers that relieve ordinary people of their savings is just a matter of degrees (pun intended).

I want to be clear though: this is not a full-throated defence of all Pakistani universities the way they are today. I have been quite vocal in my critique of many aspects of how the higher education sector operates, especially the quality of degree programmes, and I stand by it. But even a mediocre degree programme navigated with mission and purpose is better than foregoing university entirely.

Anything someone without a degree and/or some Massive Open Online Courses/ short courses and life experience earned from banging against walls can do, a person with a degree (and maybe also some MOOCs/ short courses) and life experience can do better. Higher education and experience gained from trying things are not mutually exclusive. A university education only becomes a hindrance if it gives someone the idea that it makes them too good for some kind of work.

In Pakistan, a 2025 Pakistan Institute of Development Economics study estimated that the economic rate of return on investment in education generally increases with higher levels of education, and more so for women. For a Bachelor's degree, it is 11.5 per cent, going up to 17pc, 18pc and 19pc for degrees in engineering and PhD programmes, and medical degrees, respectively.

Like a lot of trends and opinions, this one too is imported from the West. The late Charlie Kirk, with his slogan 'College is a scam', was one of them, joined by other prominent conservative influencers, including Matt Walsh, Christopher Rufo, and, of course, ex-convict Andrew Tate.

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Many American influencers holding these views and taking aim at higher education hold similarly conservative worldviews that see colleges as elitist, bureaucratic and corrupt, with outdated curricula and teaching methods, disconnected from the job market, and places that indoctrinate students with liberal, progressive culture.

Where the reasoning of these Western anti-college and our homegrown influencers' arguments find common ground is the claim that college has become too expensive for the value and opportunities it provides.

There is no question that the cost of attending a degree programme has risen both at home and abroad. A quick search will yield many articles and posts arguing both sides, ie, that college is no longer worth it, or that it is still worth it.

Earlier this year, the Federal Reserve Bank of New York reported that while higher education is becoming more expensive, the benefits for those with a degree over those without one remain, even after factoring in income forgone by not working while attending college ('College is worth the money for most graduates, new Fed research finds', CNBC, April 18, 2025). The median total cost of college rose from $140,000 to $180,000 in 2024, but the median rate of return remains a healthy 12.5pc. Viewed another way, the median annual earnings of college-educated workers stand at $80,000, compared to $47,000 for high-school graduates.

A National Bureau of Economic Research study shows the pay gap between workers with and without college degrees widens over the course of working lives, from 27pc at age 25 to 60pc by age 55. Unsurprisingly, returns vary by discipline, with engineering, computer science, and mathematics enjoying the highest returns.

It is hard to argue against statistics. In a debate on this issue, sooner or later, you will have someone dragging out the three famous college dropout billionaires — Bill Gates, Steve Jobs, and Mark Zuckerberg — to support the argument that a college degree is not necessary for success. True, but statistically, the odds are heavily in favour of the college educated. One could even add a few more current and past well-known names to this list — Michael Dell (Dell Technologies), Jack Dorsey (Twitter), and Richard Branson (Virgin Group). But that does not change the bigger picture. As of 2023, among current Fortune 500 CEOs, the number of those without a college degree is in the low single digits.

In Pakistan, degrees are a prerequisite for better opportunities — there are only so many things you can do without one. Of course, a university degree does not guarantee any outcomes with certainty, but if you are a young person in this country trying to start life as an adult, you will always have better odds with more education than less, and data seems to bear that out.

Finally, high achievement in a degree programme — even a mediocre one — signals that a person can pursue a long-term goal, staying focused, motivated, and apply themselves, not only in a short burst, but over an extended period. These are desirable traits for a team member pursuing any task. Any one individual's future is unknown, but what we know statistically about this unknown is that having an education, even a mediocre one, is better preparation for the future than none. ■

The writer has a PhD in education.

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